



REPUBLIC OF KENYA



In re Estate of Silas Kagina Gichoni (Deceased) (Succession Cause 147 of 2010) [2025] KEHC 9728 (KLR) (4 July 2025) (Ruling)

Neutral citation: [2025] KEHC 9728 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
SUCCESSION CAUSE 147 OF 2010**

MA ODERO, J

JULY 4, 2025

IN THE MATTER OF THE ESTATE OF SILAS KAGINA GICHONI (DECEASED)

RULING

1. Before this Court for determination is the Summons dated 19th June 2023 by which the 2nd Protestor/ Applicant Jayne Ndegi Mugambi Alias Jayne N. M. Mugambi seeks the following orders:-
 - “1. Spent.
 2. Spent.
 3. Spent.
 4. That pending the hearing and determination of this cause this Honourable Court be pleased to grant an order of injunction restraining the 1st Protestor/ Respondent, her agents, servants and employees from subdividing, selling, transferring, alienating or in any other manner interfering/intermeddling with land parcel numbers Mbeere/Mbita/7492 to Mbeere/Mbita/7521 and Mbeere/Riacina/4170 which forms part of the estate of the deceased.
 5. That this Honourable court be pleased to set aside its orders given on 28th March 2023 referring this matter to court annexed mediation and proceed with the hearing and final disposal of the same.
 6. That costs of the suit be provided for.”
2. The Summons was premised upon Section 47 of the *Law of Succession Act*, Cap 160, Laws of Kenya as read with Rules 49 and 63 of the Probate and Administration Rules 1980 and was supported by the affidavit of even date sworn by the Applicant.
3. The Respondent did not file any response to this application. On 19th December 2024, the court gave directions that the application be canvassed by way of written submissions, which directions were issued in the presence of counsel for both parties. The Applicant filed written submissions dated



21st March 2025. Counsel for the 3rd Protestor indicated their support for the Application whilst the Petitioner/Respondent did not file any submissions.

Background

4. This Succession cause relates to the estate of the late Silas Kagina Gichoni (hereinafter ‘the Deceased’) who died intestate on 7th November 2008. Following the demise of the Deceased, Grant of letters of Administration Intestate were issued jointly to the Applicant, one Esther Mbandi Kagina (1st Protestor) and Tabitha Ikamba Kagina (now deceased) who was the 1st widow of the Deceased. The said 1st widow later passed away on 26th January 2023.
5. On 28th March 2023 Hon. Lady Justice Florence Muchemi stayed the proceedings and referred the matter for Court annexed mediation (CAM). It would appear that to date no settlement has been reached.
6. The Applicant has now filed this application stating her dissatisfaction with the mediation process. The Applicant complains that the Respondent who is the 2nd widow of the Deceased has been intermeddling with some of the estate properties by causing the subdivision of parcels of land belonging to the estate. That the Respondent has during the mediation process transferred the parcel of land known as LR NO. Mbeere/Mbita/4170 into her own name and the name of the late 1st widow.
7. Based on the above complaints the Applicant prays that an injunction issue to prevent any further intermeddling with the estate pending determination of the cause. She also prays that the matter be removed from Court Annexed Mediation and be determined by the court.
8. The 1st and 3rd Protestors indicated their support for the application. The Respondent did not file any reply to the application.

Analysis And Determination

9. I have carefully considered the application before this court together with the annexed affidavit as well as the written submissions on record.
10. The Applicant is seeking the issuance of injunctive orders to prevent any intermeddling with estate property pending determination of this cause.
11. Although the *Law of Succession Act* Cap 160, Laws of Kenya does not have any provision dealing specifically with issuance of conservatory or injunctive orders, several authorities have held that Section 47 of the *Law of Succession Act* and Rule 73 of the Probate and Administration Rules, grant to a Probate Court wide discretionary powers to issue protective orders in respect of the estate of a deceased person.
12. Section 47 of the *Law of Succession Act* provides as follows:-

The High Court shall have jurisdiction to entertain any application and determine any dispute under this Act and to pronounce such decrees and make such orders therein as may be expedient.
13. Similarly Rule 73 of the Probate and Administration Rules provides that:-

“Nothing in these Rules shall limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court.”



14. Further by Virtue of Rule 63 of the Probate and Administration Rules, the Court is allowed to rely on the provisions of the Civil Procedure Act in particular the “Oxygen Rules” espoused by Section 1A of the Civil Procedure Act which provides that the overriding objective of the Civil Procedure Act and Rules, is to facilitate the just, expeditious, proportionate and affordable resolution to disputes.

15. The question of whether a court has jurisdiction to issue injunctive orders in a Succession Cause was settled in the case of *Floris Piezzo & Another -vs- Giancarlo Falasconi* (2014) eKLR where the court of appeal while considering whether an injunction can issue in a succession cause expressed itself as follows:-

“We have carefully considered the grounds of appeal, rival written and oral submissions, and the law. The application before the high court was for temporary injunction to restrain the appellants from dealing with the suit premises in a manner inimical to the estate of the deceased. The question which arose and had to be determined first was whether the court had jurisdiction to grant an injunction in a Succession Cause.

The appellants took the position that the Court had no such jurisdiction whereas the Respondent took the contrary position. However, the High Court was persuaded that Rule 73 of the Probate and Administration Rules reserved the Court’s inherent jurisdiction to allow for the grant of injunctions in deserving cases. We are in total agreement with this conclusion. We have no doubt at all that the Law of Succession Act gives the Court wide jurisdiction in dealing with the testamentary and administration issues of an estate. Indeed Section 47 of the said Act gives the Court jurisdiction to entertain any application and determine any dispute under the Act and to pronounce such decree and orders as may be expedient. It cannot be said that such decrees and orders would exclude injunction orders. In other words, we are of the same view that Section 47 of the Act gives the Court all-embracing powers to make necessary orders including injunctions where appropriate to safeguard the deceased’s estate. This section must be read together with Rule 73 of the Probate and Administration Rules which further emboldens Court’s jurisdiction to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of Court. We would imagine such orders would also include injunctive orders.” [Own emphasis]

16. Similarly in the case of *Millicent Mbatha Mulavu & another v Annah Ndunge Mulavu & 3 others* [2018] eKLR the court affirmed that the above provisions grant the High Court powers to issue protective measures including issuing injunctions for purpose of preserving the estate of a deceased person. Therefore the High Court has jurisdiction to issue all manner of orders including the issuance of conservatory and/or injunctive orders where appropriate in order to preserve and safeguard the estate of a Deceased person pending final distribution to the genuine heirs.

17. The Applicant alleges that the Respondent has been intermeddling with estate property by alienating some parcels of land and selling the same to third parties. That some of the properties which were initially registered in the name of the Deceased have now been transferred to the Respondent and the 1st widow (who is now deceased). For these reasons the Applicant seeks orders to protect the estate from any interference pending final distribution.

18. The grounds upon which an interlocutory injunction may be granted were set out in the case of *Giella -vs- Caman Brown* [1973] EA as follows.

“The conditions for the grant of an interlocutory injunction are well settled in East Africa. First an applicant must show a prima facie case with a probability of success. Secondly, an



interlocutory injunction will not normally be granted unless the applicant might otherwise suffer irreparable injury, which would not adequately be compensated by an award of damages. Thirdly, if the court is in doubt, it will decide on application on the balance of convenience.”

19. The definition of a Prima Facie Case was given in the case of Mrao Ltd -vs- First American Bank Of Kenya Ltd & 2 Others [2003] eKLR as follows:-

“In Civil Cases a prima facie case is a case in which on the material presented to the court, a tribunal properly directing itself will conclude that there exists a right which has apparently been infringed by the opposite party to call for an explanation or rebuttal from the latter. A prima facie case is more than an arguable case. It is not sufficient to raise issues but the evidence must show an infringement of a right, and the probability of success of the applicant’s case upon trial. This is clearly a standard which is higher than an arguable case.”

20. Intermeddling into estate property by any person be it a beneficiary, V an Administrator or any third party is a serious transgression which the courts cannot countenance. Indeed so seriously does the law take the issue of intermeddling that it has been elevated to a criminal offence. Section 45 of the [Law of Succession Act](#) provides as follows:-

“45(1) Except so far as expressly authorized by this Act or by any other written law, or by grant of representation under this Act, no person shall, for any purpose take possession or dispose of, or otherwise intermeddle with any free property of a deceased person.

(2) Any person who contravenes the provisions of this Section shall -

- a. be guilty of an offence and liable to a fine not exceeding ten thousand shillings or to a term of imprisonment not exceeding one year or to both such fine and imprisonment.
- b. be answerable to the rightful executor or administrator to the extent of the assets with which he has intermeddled after deducting any payments made in the due course of administration.”

21. The Applicant has accused the Respondent of alienating estate property to herself and selling off estate property to third parties. It must be remembered that though Administrators have been appointed and issued with Grant of letters of Administration no final distribution of this estate can be undertaken as said Grant is yet to be confirmed.

22. The Applicant alleges that the Respondent who is the 2nd widow of the Deceased secretly caused the subdivision of LR No. Mbeere/Mbita /41 into two portions. That the sub-division known as Mbeere/Mbita 4258 was then registered in the name of the Respondent whilst Plot Mbeere/Mbita/4257 was sold to the Government.

23. As proof of these allegations the Applicant annexed to her supporting affidavit dated 19th June 2023 a copy of the Green Card for Mbeere/Mbita/41 (Annexure ‘JNM1’). This document clearly shows that the Deceased Silas Kagina Gichoni was registered as proprietor of this parcel of land on 14th January 2000. Thereafter on 23rd August 2011 the said parcel of land was subdivided into two (2) portions being



Plot 4257 measuring 1.01 hectares, which was registered in the name of the District Commissioner Mbeere and Plot 4258 which was registered in the name of the Respondent Esther Mbandi Kagina.

24. It is pertinent to note that the Deceased in this matter passed away on 7th November 2008. Thus there is no way the Deceased could have sanctioned, authorized and/or participated in the sub-division of this parcel of land in August 2011 which was three (3) years AFTER his demise. Moreover this sub-division took place while this succession cause was pending in the court and there is no evidence that the court gave authority to any party to effect such sub-division.
25. Additionally the Applicant annexed to her supporting Affidavit a certificate of Official search dated 31st May 2023 in respect of Title Number Mbeere/Mbita/4258 (Annexure 'JNM 2') which indicates that the Title was closed upon subdivision. Annexure 'JNM 3' is a certificate of official search dated 15th June 2023 in respect of Title Number Mbeere/Mbita/4170 showing that said sub-division was registered in the name of the Respondent and the 1st widow (now Deceased).
26. None of the above transactions were sanctioned and/or authorised by the court. No other beneficiary gave consent for this alienation of estate property. More importantly in the absence of a confirmed Grant the act of sub-dividing and/or transferring estate property clearly amounts to intermeddling. The fact that the respondent failed to file any reply to this application is very telling.
27. In the case of Benson Mutuma Muriungi -vs- Ceo Kenya Police Sacco & Another 2016 eKLR the Court stated as follows;-

“Whereas there is no specific definition provided by the Act for the term intermeddling, it refers to any act or acts which are done by a person in relation to the free property of the deceased without the authority of any law or grant of representation to do so. The category of the offensive acts is not heretically closed but would certainly include taking possession, or occupation of, disposing of, exchanging, receiving, paying out, distributing, donating, charging or mortgaging, leasing out, interfering with lawful liens or charge or mortgage of the free property of the deceased in contravention of the *Law of Succession Act*. I should add that any act which will dissipate or diminish or put at risk the free property of the deceased are acts of intermeddling in law. I reckon that intermeddling with the free property of the deceased is a very serious criminal charge for which the person intermeddling may be convicted and sentenced to imprisonment or fine or both under section 45 of the *Law of Succession Act*. That is why the law has taken a very firm stance on intermeddling and has clothed the court with wide powers to deal with cases of intermeddling and may issue any appropriate order(s) of protection of the estate against any person.” (Own emphasis)

28. In the case of John Kasyoki Kieti -vs- Tabitha Nzivulu Kieti & Another Machakos Civil Case No. 95 of 2001, the court held that doing anything affecting the estate of a Deceased person amounts to intermeddling.
29. Likewise in the case of Gitau & 2 Others -vs- Wandai & 5 Others [1989] KLR 231, the court held that entering into an agreement to sell estate property before obtaining a Grant is an act of intermeddling.
30. Is this then a case which warrants the issuance of injunction orders? In Robert Mugowa Karanja -vs- Ecobank (Kenya) Limited and Another [2019] eKLR the Court stated as follows;-

“Circumstances for consideration before granting a temporary injunction under Order 40 Rule 1 of the Civil Procedure Rules requires proof that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party of the suit or wrongfully sold in execution of a decree or that the Defendant threatens or intends to recover or dispose the



property, the court is in such situation enjoined to grant a temporary injunction to restrain such acts.....”

31. From the material presented to this court it is quite clear that there has been intermeddling in the estate of the Deceased and if the court does not step in with appropriate measures then such intermeddling may continue leading to the dissipation of the estate before distribution to the detriment of the heirs to the estate. Therefore I am satisfied that a prima facie case warranting grant of injunctive orders had been established.

32. I note that this matter was referred for Court Annexed Mediation in March 2023. To-date two (2) years later no settlement agreement has been reached. The Applicant opposes the mediation process because she believes the Mediator is biased as the concerns raised by the Applicant were being brushed aside.

33. Mediation is a voluntary process to which each party must submit willingly. The court cannot compel any party to submit to mediation.

In this case given that two (2) years have not yielded any settlement of the dispute and given the Applicant has serious misgivings about the mediation process I do believe the orders to have the dispute referred to Court Annexed Mediation ought to be set aside.

34. Finally this application is successful and the court makes the following orders:-

(1) An injunction be and is hereby issued restraining the 1st and 2nd Respondents or any other party from in any manner whatsoever meddling and/or dealing with the property of the estate specifically Mbeere/Mbita/7492, Mbeere/Mbita/7521 and Mbeere/Riacina/4170 pending final determination of this succession cause.

(2) The orders made on 28th March 2023 referring this matter for Court Annexed Mediation be and are hereby set aside.

(3) This being a family matter each side will meet their own Costs.

DATED IN NYERI THIS 4TH DAY OF JULY 2025.

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MAUREEN A. ODERO

JUDGE

